

No. 86-927

Supreme Court, U.S.  
FILED

JAN 5 1987

JOSEPH F. SPANIOL, JR.  
CLERK

# In the Supreme Court

OF THE

## United States

OCTOBER TERM, 1986

GERTRUDE WILKS, L. A. BRECKENRIDGE,  
ARN CENEDELLA, EULESLEY REECE,  
EDWARD JOHNSON, LEON ABERNATHY,  
JOE SANDERS, ROY LEE ASHFORD,  
MARY L. OWENS WHITE and GRANT WHITE,  
*Petitioners,*

VS.

BARBARA A. MOUTON, RUBEN ABRICA,  
FRANK OMOWALE SATTERWHITE,  
JAMES A. BLAKEY, JR.,  
CITY OF EAST PALO ALTO and  
COUNTY OF SAN MATEO,  
*Respondents.*

### COUNTY OF SAN MATEO'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

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12 pp



## **QUESTION PRESENTED**

The petition for writ of certiorari presents one question: Should this Court review a California Supreme Court decision which did not rely on, discuss, or even mention any federal law, which applied state law to facts determined by a state trial court, and which upheld votes challenged solely on technical grounds?

## **LIST OF PARTIES**

Petitioners have accurately listed the parties in their petition.

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Respondent COUNTY OF SAN MATEO, a political subdivision of the State of California (hereinafter "the County"), submits this brief in opposition to the petition for writ of certiorari dated November 18, 1986.

#### OPINION BELOW

The opinion of the California Supreme Court was reported at 42 Cal.3d 400 and is reprinted in the appendix to the petition. The

appellate and trial court decisions were not reported and are also reprinted in the appendix to the petition.

### **JURISDICTION**

The opinion of the California Supreme Court was filed on August 21, 1986. Petitioners first mailed their petition on November 18, 1986. The Clerk returned the petition on November 19, 1986 for failure to comply with Rule 33.1(d). Petitioners then refiled a proper petition on December 4, 1986.

Petitioners assert jurisdiction under 28 U.S.C. 1257(3). If the second petition was "promptly substituted," then the petition is timely under 28 U.S.C. 2101(c) and Rule 33.7.

### **CONSTITUTIONAL PROVISION INVOLVED**

Petitioners contend this case involves Section 1 of the 14th Amendment to the United States Constitution, which provides in part: "nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Petitioners never cited or discussed this provision in the state courts. The County contends this case does not involve any federal constitutional or statutory provisions.

### **STATEMENT OF THE CASE**

#### **A. The California Supreme Court Decided Only Issues of State Law**

At an election held on June 7, 1983, local voters decided that the unincorporated community of East Palo Alto should become a city.

Petitioners filed an election contest under California law alleging voter fraud and official misconduct. The trial lasted sixteen days. Over one hundred witnesses testified and over two hundred documents were introduced into evidence.



After this extensive trial, the court rejected petitioners' allegations and found there was no fraud and no misconduct. The court confirmed the election.

Petitioners appealed. An appellate court reversed in a two-to-one decision.

The County and the newly formed City of East Palo Alto then sought review in the California Supreme Court. In a unanimous decision, the California Supreme Court nullified the appellate court's decision and affirmed the judgment of the trial court.

The California Supreme Court did not decide any federal questions. The Court did not rely on, discuss, or even mention any federal case, statute, or Constitutional provision.

#### **B. There Was No Fraud or Coercion in This Election**

In their "statement of the case," petitioners quote extensively from a portion of the California appellate court's decision, apparently to satisfy the requirement of Rule 21.1(g) that the statement of the case contain "the facts material to the consideration of the questions presented." (Petition, pp. 3-4) Petitioners misstate the facts. The California Supreme Court nullified the appellate court's decision. The Supreme Court was bound by the trial court's determination of the facts, not the decision of the appellate court. (Appendix to petition, p. A-2; 42 Cal.3d at 404) The Supreme Court stated:

"The trial court determined that there had been no fraud, coercion or tampering in connection with any of the challenged ballots. The court determined that every voter who had disclosed his ballot to a third party had done so voluntarily. Most voters who disclosed their ballots did so because they needed help in view of their age, infirmity or illiteracy. There was substantial compliance with the essential provisions of the absentee voter provisions of the Election Code. Under these circumstances we will not deprive the individuals who cast the challenged ballots of the exercise of their fundamental right to vote." (Appendix to petition, p. A-14; 42 Cal.3d at 413)

Thus, contrary to Petitioners' claims, there was no voter fraud or coercion in this election.

## REASONS FOR NOT REVIEWING THIS MATTER

### A. This Case Does Not Present Any Federal Question

This court has certiorari jurisdiction over state court decisions under 28 U.S.C. 1257, which provides that: "Final judgments or decrees rendered by the highest court of a state in which a decision could be had, may be reviewed by the Supreme Court as follows: . . . (3) By writ of certiorari, . . . where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States."

Under Rule 17.1, this court will grant review on writ of certiorari "only when there are special and important reasons therefor."

Since the California Supreme Court did not pass upon a federal question, this court will assume "that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Webb v. Webb*, 451 U.S. 493, 495, 101 S.Ct. 1889, 1891, 68 L.Ed.2d 392 (1981). Furthermore, even where the state court may have discussed and considered federal law, this Court will not review the decision "[i]f the state court decision indicates clearly and expressly that it is alternatively based on bona fide separate, adequate, and independent grounds." *Michigan v. Long*, 463 U.S. 1032, 1041, 103 S.Ct. 3469, 3476, 77 L.Ed.2d 1201 (1983).

This case does not present any substantial federal question. In fact, this case does not present any federal question at all.

### B. The State Court Based Its Decision Solely on State Grounds

In reviewing the decision of the state trial court, the California Supreme Court applied existing California statutes and case law,

as well as one California Constitutional provision, to the facts determined by the trial court. The state Supreme Court determined that:

1. California election laws authorized election officials to mail 15 absentee ballots to addresses specified by the voters although the addresses were not the residence addresses of the voters. (Appendix to petition, pp. A-3-A-4; 42 Cal.3d at 404-406)

2. California Elections Code Section 1013 technically requires the voter to return his completed absentee ballot personally if he decides not to use the mail, but noncompliance with this technical requirement will not disenfranchise voters. (Appendix to petition, pp. A-11-A-13; 42 Cal.3d at 411-412)

3. California case law recognizes that absentee ballots validly may be cast in the presence of or with the assistance of third parties, and no state statute or state constitutional provision prohibits this. (Appendix to petition, pp. A-5-A-10; 42 Cal.3d at 406-410)

Thus, it is clear that the California Supreme Court decided only issues of state law. The court did not decide any federal questions. The court did not rely on, discuss, or even mention any federal case, statute, or constitutional provision.

Since the California Supreme Court did not pass upon a federal question, and since the decision clearly indicates that it is based solely on state grounds, this court should deny the petition for writ of certiorari.

### **C. Petitioner Never Raised Any Federal Questions in the State Courts**

Petitioners contend that "The California Supreme Court's decision squarely challenges the principle of the cases culminating in *Hadley et al. v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50, 90 S.Ct. 791, 25 L.Ed.2d 45 (1970)." (Petition, p. 7) In *Hadley*, this Court held that a Missouri statute violated the "one man, one vote" principle because it allowed a school district which contained 60% of the population to elect only three (50%) of the six trustees of a consolidated junior

college district governing board. *Hadley* has nothing to do with this case. This is not an apportionment case. Petitioners' votes have not been diluted. Petitioners have not been denied an equal opportunity to participate in the election. Petitioners' arguments, if accepted, would actually result in the complete disenfranchisement of other voters whose ballots would be invalidated on purely technical grounds.

Petitioners allege that they properly presented a federal constitutional issue to the state courts. (Petition, p. 6) Petitioners did cite *Hadley* on four occasions to the state courts. However, petitioners never raised any argument in the state courts that this case involved federal constitutional issues. Petitioners' mere citation of *Hadley* for the proposition that votes may not be diluted was not sufficient to raise any federal questions in the state courts.

Petitioners claim this case involves the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution. (Petition, p. 2) Petitioners did not discuss or even cite these provisions at any stage of the state court proceedings. In fact, petitioners based their election contest exclusively on state law:

"This case is an election contest, and as such, is of necessity limited to challenges to specific ballots based on specific language in the California Constitution or in California statutes." (Appendix to petition, P. A-87 (Petitioners' Reply Brief in state appellate court))

Since petitioners never even mentioned the federal constitutional provisions allegedly involved in this case, they did not properly present a federal question to the state courts, and their petition should be denied.

#### **D. No Wrongdoing Occurred**

Petitioners also cite *Anderson v. United States*, 417 U.S. 211, 94 S.Ct. 2253 (1974); *Duncan v. Poythress*, 657 F.2d 691, (5th Cir. 1981); and *United States v. Morado*, 454 F.2d 167 (5th Cir. 1972). *Anderson* was a criminal case in which petitioners were convicted of conspiracy to cast fraudulent votes under 18 U.S.C. 241. *Morado* was also a criminal case under 18 U.S.C. 241 in

which appellants were convicted of stealing an election and violating state election laws. *Duncan* was a civil rights action holding that Georgia could not disenfranchise the entire state electorate by refusing to call a special election to fill a vacancy in the State Supreme Court when Georgia law clearly mandated such an election. These cases were not cited in the state courts.

These cases also have nothing to do with this case. Here, unlike *Anderson* and *Morado*, the trial court found that no wrongdoing had occurred. Here, unlike *Duncan*, no voters were disenfranchised. In fact, the California Supreme Court refused to disenfranchise voters on purely technical grounds.

### CONCLUSION

The decision of the California Supreme Court did not rely on, discuss, or even mention any federal law. The court based its decision solely on state law. Petitioners never made any argument in the state courts, based on *Hadley* or any other federal law, that raised federal questions.

There was no fraud, coercion or tampering in this election. Under these circumstances, the California Supreme Court correctly upheld the election and refused to invalidate ballots on mere technical grounds.

This Court should deny the petition for writ of certiorari.

Dated: January 2, 1987

Respectfully submitted,

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